NOT TO BE INCLUDED
IN BOUND VOLUMES

PHG
Las Vegas, NV

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUNRISE MOUNTAINVIEW HOSPITAL, INC.
d/b/a MOUNTAINVIEW HOSPITAL

and

Case 28-CA-23100

CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES ORGANIZING
COMMITTEE (CNA/NNOC)

ORDER DENYING MOTION FOR RECONSIDERATION

On November 30, 2011, the National Labor Relations Board issued a Decision and Order[1] affirming the judge's recommended finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally scheduling four on-call nurses on July 5, 2010 (the observed July 4 holiday), instead of following its normal holiday staffing policy of scheduling two on-call nurses with one backup. On December 22, 2011, the Respondent filed a motion for reconsideration of the Board's Decision and Order.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Respondent argues that the Board erroneously failed to consider whether the Respondent also violated Section 8(a)(5) and (1) of the Act by unilaterally departing from its established surgical scheduling policy by permitting

[1] 357 NLRB No. 122.

physicians to schedule elective surgeries on a holiday. The Board found that because the staffing change was unlawful, the additional finding would be cumulative and would not affect the remedy. The Respondent asserts that the Board failed to fulfill its obligation under Section 10(c) of the Act to resolve issues before it. The Respondent further argues that as a result, the Board refused to consider the Respondent's defense that it was not required to bargain with the Union regarding the effects of scheduling elective surgeries on a holiday--e.g., the scheduling of nurses to staff those surgeries--because the scheduling of surgical cases is a core entrepreneurial function and, as such, not a mandatory subject of bargaining.

It is common for the Board to decline to pass on issues when such a finding would be cumulative and would not materially affect the remedy, see, e.g., *Management Consulting, Inc. (MANCON) ,* 349 NLRB 249, 249 fn. 2 (2007), and this practice has been met with approval in the courts. See *United Steelworkers of America v. NLRB (Mississippi Steel Corp.)*, 405 F.2d 1373, 1377 (D.C. Cir. 1968), enforcing in relevant part 169 NLRB 647 (1968). Further, the Respondent has failed to cite any relevant authority for its position that Section 10(c) requires the Board to pass on every allegation presented by the General Counsel.

Because the Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally departing from its established holiday staffing policy, the Board's ordered remedy--to cease and desist from failing and refusing to bargain with the Union--would not be altered were the Board to additionally

find that the Respondent violated Section 8(a)(5) and (1) by unilaterally scheduling elective surgeries on an observed holiday. Even if the Board were to find merit to the Respondent's defense that surgical scheduling is not a mandatory subject of bargaining but rather a core entrepreneurial function, the result would not change; the Board would nonetheless find that the Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to bargain over the effects of that decision, including the Respondent's alteration of the nurses' schedules. Accord *King Soopers, Inc.*, 340 NLRB 628 (2003).

Thus, having duly considered the Respondent's motion, we find that the motion fails to present "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

IT IS ORDERED, therefore, that the motion for reconsideration is denied.

Dated, Washington, D.C., May 1, 2012.

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Mark Gaston Pearce, Chairman

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD